

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

MELANIE R. HAYES,

Plaintiff,

Case No. 16-cv-13583

v.

Honorable Thomas L. Ludington  
Magistrate Judge Patricia T. Morris

DAVID ROSENBAUM,

Defendant.

---

**ORDER ADOPTING REPORT AND RECOMMENDATION AND DISMISSING  
PLAINTIFF'S COMPLAINT**

On October 6, 2016, Plaintiff Melanie R. Hayes filed a Complaint alleging that Defendant David Rosenbaum breached a contract for the sale of Plaintiff's company. ECF No. 1. All pretrial matters in the case were referred to Magistrate Judge Patricia T. Morris on October 12, 2016. ECF No. 5. On October 20, 2016, Plaintiff filed a motion for appointment of counsel. ECF No. 7. On October 31, 2016, Magistrate Judge Morris issued a report recommending that Plaintiff's Complaint be sua sponte dismissed for lack of subject matter jurisdiction.<sup>1</sup> The report and recommendation explained that the Complaint did not include a federal cause of action on its face. The report further explained that Plaintiff had failed to join an indispensable party, the entity which had contracted to buy the business. Because joinder of that party would destroy complete diversity, the Magistrate Judge concluded that the case must be dismissed. The report further recommended that Plaintiff's motion for appointment of counsel should be denied as moot.

---

<sup>1</sup> Two documents titled "Report and Recommendation" have been filed on the docket. ECF Nos. 8, 9. The two are materially identical. Because a clerical error resulted in the first filing, that report and recommendation will be rejected as moot.

Although the Magistrate Judge's report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendant filed any objections. The election not to file objections to the Magistrate Judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 9, is **ADOPTED**.

It is further **ORDERED** that the duplicate report and recommendation, ECF No. 8, is **REJECTED as moot**.

It is further **ORDERED** that Plaintiff Melanie R. Hayes's motion for appointment of counsel, ECF No. 7, is **DENIED as moot**.

It is further **ORDERED** that Plaintiff Melanie R. Hayes's Complaint, ECF No. 1, is **DISMISSED**.

Dated: November 29, 2016

s/Thomas L. Ludington  
THOMAS L. LUDINGTON  
United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on November 29, 2016.

s/Michael A. Sian  
MICHAEL A. SIAN, Case Manager